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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 CLOAKWORKS, INC.,)	CASE NO. 08-CV-02044-PJH
)	
14 Plaintiff,)	
)	DEFENDANT CLOAKWARE INC.'S
15 v.)	ANSWER TO ORIGINAL COMPLAINT
)	FOR PATENT INFRINGEMENT AND
16 CLOAKWARE, INC.,)	COUNTERCLAIMS
)	
17 Defendant.)	DEMAND FOR JURY TRIAL
)	
18)	

19 Pursuant to Rules 8, 12, and 13 of the Federal Rules of Civil Procedure and the Local
20 Rules of this Court, the defendant Cloakware Inc. ("Cloakware") answers the allegations of the
21 plaintiff Cloakworks, Inc.'s ("Cloakworks") Complaint and asserts counterclaims as follows:

22 **PARTIES**

- 23 1. Cloakware is without knowledge or information sufficient to form a belief as to the
24 truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.
- 25 2. Cloakware admits the allegations contained in paragraph 2 of the Complaint.
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JURISDICTION AND VENUE

4. Cloakware admits that the Complaint purports to assert a cause of action for patent infringement under the Patent Act, 35 U.S.C. § 271, and that the Court has subject matter jurisdiction. Cloakware is not challenging that venue is proper in this District. Cloakware denies the remaining allegations contained in Paragraph 4 of the Complaint.

5. Cloakware is not challenging that the Court has personal jurisdiction over Cloakware. Cloakware denies the remaining allegations contained in paragraph 5 of the Complaint.

INTRADISTRICT ASSIGNMENT

6. Paragraph 6 states a legal conclusion for which no answer is required.

BACKGROUND

7. Cloakware admits that U.S. Patent No. 6,192,475 (“‘475 Patent”) shows February 20, 2001 as its date of issue and lists David R. Wallace as the inventor. Cloakware further admits that what purports to be a copy of the ‘475 Patent is attached to the Complaint as Exhibit A. Cloakware is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the Complaint, and therefore denies them.

8. Cloakware is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and therefore denies them.

9. Cloakware admits that the ‘475 Patent contains 22 claims, and that one form of tampering is when a hacker makes unauthorized changes to software. Cloakware denies the remaining allegations contained in paragraph 9.

10. Cloakware admits that the ‘475 Patent shows February 20, 2001 as the date of issue, and that it became aware of the existence of the ‘475 Patent no later than 2004. Cloakware denies the remaining allegations contained in paragraph 10.

11. With respect to the first sentence of paragraph 11 of the Complaint, Cloakware admits that it makes and sells products intended to prevent software reverse engineering and

1 tampering, and has described itself as the world's leading provider of products and services to
2 protect digital assets. Cloakware denies the first sentence of paragraph 11 to the extent that it
3 implies that Cloakware's products provide security for any and all types of "digital content."
4 Cloakware denies the allegations contained in the second sentence of paragraph 11 of the
5 Complaint. With respect to the third sentence of paragraph 11 of the Complaint, Cloakware
6 admits that it sells its products to leading providers of personal computers, portable devices,
7 mobile phones, and set-top boxes; Cloakware denies the sentence to the extent that it suggests that
8 Cloakware has sold more than one billion products and denies the remaining allegations in the
9 sentence. Cloakware denies the allegations contained in the fourth sentence of paragraph 11 of the
10 Complaint.

11 12. Cloakware admits that its products include the Cloakware Security Suite (which
12 includes a Transcoder), Cloakware Robustness Solutions, and Cloakware Server Password
13 Manager. Cloakware denies the remaining allegations contained in the first sentence of paragraph
14 12 of the Complaint. Cloakware denies the allegations contained in the second and third sentences
15 of paragraph 12 of the Complaint. With respect to the fourth sentence of paragraph 12 of the
16 Complaint, Cloakware is without knowledge or information sufficient to know what meaning
17 Cloakworks ascribes to various terms and phrases (which appear to be taken from the '475 Patent),
18 and therefore denies the allegations. With respect to the fifth sentence of paragraph 12 of the
19 Complaint, Cloakware admits that its products are intended to prevent software reverse
20 engineering and tampering, and denies that all its products perform all the functions listed..
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22 **COUNT 1**

23 13. Cloakware repeats and restates its responses to the allegations contained in
24 paragraphs 1 through 12 of the Complaint in their entirety.

25 14. Cloakware is without knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained in paragraph 14 of the Complaint, and therefore denies them.

27 15. Cloakware denies the allegations contained in paragraph 15 of the Complaint.
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- 1 16. Cloakware denies the allegations contained in paragraph 16 of the Complaint.
- 2 17. Cloakware denies the allegations contained in paragraph 17 of the Complaint.
- 3 18. Cloakware denies the allegations contained in paragraph 18 of the Complaint.
- 4 19. Cloakware denies the allegations contained in paragraph 19 of the Complaint.
- 5 20. Cloakware denies the allegations contained in paragraph 20 of the Complaint.
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7 **PRAYER**

8 Cloakware denies that Cloakworks is entitled to any of its requested relief.

9 **DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Non-Infringement)**

12 Cloakware does not directly infringe and has not directly infringed, either literally or under
13 the doctrine of equivalents, and does not indirectly infringe and has not indirectly infringed, by
14 contributing to infringement or inducing infringement of, any valid and enforceable claim of the
15 '475 Patent.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Invalidity)**

18 One or more claims of the '475 Patent is invalid for failing to meet one or more of the
19 requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of
20 the United States Code, including without limitation §§ 101, 102, 103, 112, and/or 116.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Statutory Limitations on Damages and Recovery of Costs)**

23 Upon information and belief, Cloakworks' claims for relief and prayer for damages are
24 limited by 35 U.S.C. §§ 286 and/or 287, and Cloakworks is barred by 35 U.S.C. § 288 from
25 recovering costs associated with its action.

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FOURTH AFFIRMATIVE DEFENSE

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(Prosecution History Estoppel)

13 Cloakworks is estopped from construing any claim of the '475 Patent to be infringed or
14 have been infringed, either literally or under the doctrine of equivalents, by any method or product
15 manufactured, used, imported, sold, or offered for sale by Cloakware in view of the prior art and
16 because of admissions and statements made to the United States Patent and Trademark Office
17 during prosecution of the application leading to the '475 Patent, because of disclosure or language
18 in the specification of the '475 Patent, and/or because of limitations in the claims of the '475
19 Patent.

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FIFTH AFFIRMATIVE DEFENSE

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(Laches, Waiver, Estoppel)

25 Cloakworks' claims are barred by laches, waiver, and/or estoppel because, on information
26 and belief, Cloakworks knew of the basis for the allegations it now asserts for many years but
27 unreasonably delayed in bringing suit.

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SIXTH AFFIRMATIVE DEFENSE

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(Adequate Remedy Other Than Injunctive Relief)

33 Cloakworks is not entitled to injunctive relief because any alleged injury to Cloakworks is
34 not immediate or irreparable, and Cloakworks has an adequate remedy at law.

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COUNTERCLAIMS

37 Cloakware Inc. ("Cloakware") brings these Counterclaims against Cloakworks, Inc.
38 ("Cloakworks"):

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PARTIES

41 1. Counterclaim-plaintiff Cloakware Inc. is a company organized and existing under
42 the laws of Delaware with its principal place of business in Vienna, Virginia.

1 11. To resolve the legal and factual questions raised by Cloakworks and to afford relief
2 from the uncertainty and controversy that Cloakworks' accusations have precipitated, Cloakware
3 is entitled to a declaratory judgment that it has not infringed and is not infringing, directly or
4 indirectly, any valid, enforceable claim of the '475 Patent either literally or under the doctrine of
5 equivalents.

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7 **SECOND COUNTERCLAIM**

8 **(Declaration of Invalidity of the '475 Patent)**

9 12. Cloakware repeats and realleges the allegations contained in paragraphs 1 through
10 11 of the Counterclaims as if fully set forth herein.

11 13. One or more claims of the '475 Patent is invalid for failing to meet one or more of
12 the requisite statutory and decisional requirements and/or conditions for patentability under Title
13 35 of the United States Code, including without limitation, §§ 101, 102, 103, 112, and/or 116.

14 14. To resolve the legal and factual questions raised by Cloakworks and to afford relief
15 from the uncertainty and controversy that Cloakworks' accusations have precipitated, Cloakware
16 is entitled to a declaratory judgment that the claims of the '475 Patent are invalid.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Cloakware requests that this Court enter a judgment in its favor and
19 against Cloakworks as follows:

- 20 A. Dismiss the Complaint in its entirety, with prejudice;
21 B. Enter judgment in favor of Cloakware and against Cloakworks;
22 C. Declare that the '475 Patent has not been infringed by Cloakware;
23 D. Declare that the '475 Patent is invalid and unenforceable;
24 E. Award Cloakware its costs (including expert fees), disbursements, and reasonable
25 attorneys' fees incurred in this action, pursuant to 35 U.S.C. § 285; and
26 F. Grant such further relief to Cloakware as is just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Cloakware demands a trial by jury on all issues so triable.

Dated: June 11, 2008

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